

AMENDED IN ASSEMBLY JULY 7, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 171

Introduced by Senator Alquist

(Coauthors: Assembly Members Cohn and Dymally)

February 9, 2005

An act to add Section 859.5 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 171, as amended, Alquist. Interrogation: recording.

Existing law provides that under specified conditions the statements of witnesses, victims, or perpetrators of specified crimes may be recorded and preserved by means of videotape.

This bill would enact the Truth in Prosecution Act of 2005, which would provide that (1) except as specified, any custodial interrogation ~~of an individual~~ conducted at a place of detention ~~and relating to~~ *of an individual suspected of committing or accused of* a homicide or a violent felony, as defined, shall be electronically recorded, as specified; (2) the state shall not destroy or alter the electronic recording of a custodial interrogation, except as specified; and (3) if a court finds that a defendant was subjected to an unlawful custodial interrogation, the court shall, at the request of the defendant, provide the jury with a cautionary instruction, as specified. By imposing these new requirements on local law enforcement when they are interrogating a defendant ~~relating to suspected of committing or accused of~~ a homicide or violent felony, this bill would impose a state-mandated local program upon local government.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act to require the creation of an electronic record of an entire
3 custodial interrogation in order to eliminate disputes in court as
4 to what actually occurred during the interrogation, thereby
5 improving prosecution of the guilty while affording protection to
6 the innocent.

7 SEC. 2. This act shall be known and may be cited as the
8 Truth in Prosecution Act of 2005.

9 SEC. 3. Section 859.5 is added to the Penal Code, to read:

10 859.5. (a) (1) Any custodial interrogation of an individual
11 ~~relating to suspected of committing or accused of~~ a homicide, as
12 defined in Chapter 1 (commencing with Section 187) of Title 8
13 of Part 1, or a violent felony, as defined in subdivision (c) of
14 Section 667.5, shall be electronically recorded, ~~including, but not~~
15 ~~limited to, the interrogation by a law enforcement officer of an~~
16 ~~individual suspected of having committed such an offense.~~

17 (2) *The requirement for the electronic recordation of a*
18 *custodial interrogation pursuant to this section shall not apply if*
19 *the person to be interrogated provides an electronically recorded*
20 *statement expressing that he or she will speak to the law*
21 *enforcement officer or officers only if the interrogation is not*
22 *electronically recorded.*

23 (3) The state shall not destroy or alter any electronic
24 recording made of a custodial interrogation of a defendant until
25 the time that a defendant's conviction for any offense relating to
26 the interrogation is final and all direct and habeas corpus appeals

1 are exhausted or the prosecution of the defendant for that offense
2 is barred by law.

3 (b) Any law enforcement officer who conducts a custodial
4 interrogation of an individual ~~relating to an offense~~ described in
5 subdivision (a) shall be required to make an electronic recording
6 of the interrogation pursuant to subdivision (a), unless the law
7 enforcement officer can demonstrate, by a preponderance of the
8 evidence, *that the electronic recording of the custodial*
9 *interrogation was not feasible for a specified reason, including,*
10 *but not limited to,* either of the following:

11 (1) Access to equipment required to electronically record an
12 interrogation could not be obtained during the period of time that
13 the defendant could be lawfully detained.

14 (2) The failure to create an electronic recording of the entire
15 custodial interrogation was the result of a malfunction of the
16 recording device and obtaining a replacement device was not
17 feasible.

18 (c) If a court finds that a defendant was subjected to a
19 custodial interrogation in violation of subdivision (a), the court
20 shall, at the request of the defendant, provide the jury with a
21 cautionary instruction substantially similar to the following:

22 “The law requires a law enforcement officer, when questioning
23 a person who may be charged with a ~~crime~~ *homicide or violent*
24 *felony*, to record all oral statements made to and made by that
25 person. The failure of a law enforcement officer to follow this
26 law results in less than a full and accurate record of the actual
27 statement made by the defendant, and denies the defendant the
28 ability to present recorded evidence that may be favorable to his
29 or her case.

30 You have heard evidence that the defendant made a statement
31 to a law enforcement officer. You are the exclusive judge as to
32 whether the defendant made the statement, and as to what was
33 actually said. If you find that the defendant did not make a
34 statement, you must disregard the evidence of the statement and
35 not consider it for any purpose. If you find that the defendant did
36 make a statement, you must view the statement as reported with
37 caution, because unrecorded oral statements made by a defendant
38 out of court to a law enforcement officer should be viewed with
39 caution.

1 You must decide whether or not the defendant in fact made that
2 statement, in whole or in part. The fact that a law enforcement
3 officer did not comply with the law requiring the electronic
4 recording of the reported statement shall be considered by you as
5 a circumstance tending to show that the statement was not made.
6 This failure by the law enforcement officer shall also be
7 considered by you as a circumstance bearing on the weight and
8 credibility to be given to the officer's account of the statement."

9 (d) For the purposes of this section, the following terms have
10 the following meanings:

11 (1) "Custodial interrogation" means express questioning, or its
12 functional equivalent, that is conducted at a place of detention
13 that a law enforcement officer should know is reasonably likely
14 to elicit an incriminating response from the defendant, under
15 circumstances in which the defendant does not feel free to leave
16 or terminate the questioning.

17 (2) "Electronic recording" means a motion picture, videotape,
18 or digital recording that includes both audio and visual
19 representations of any interrogator or defendant involved in a
20 custodial interrogation. For a violent offense, other than a
21 homicide, "electronic recording" may include an audiotape.

22 (3) "Law enforcement officer" means any officer of the police,
23 sheriff, highway patrol, or district attorney, and any peace officer
24 included in Chapter 4.5 (commencing with Section 830).

25 (4) "Place of detention" means a police station, correctional
26 facility, holding facility for prisoners, or any other governmental
27 facility in which a person may be held in detention in connection
28 with any criminal charge that has been, or may be, filed against
29 the person.

30 SEC. 4. If the Commission on State Mandates determines that
31 this act contains costs mandated by the state, reimbursement to
32 local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.